Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of Status of	)	MB Docket No. 07-269
Competition in the Market for	)	
the Delivery of Video Programming	)	

<u>REPLY COMMENTS OF CBS CORPORATION</u>

Howard F. Jaeckel

51 W. 52nd Street
New York, New York 10019
Attorney for CBS Corporation

August 28, 2009

TABLE OF CONTENTS

SUMMARY

The American system of broadcasting has been characterized by a unique partnership between national broadcast networks and their local affiliates, which has blended local news and information with universally-available national news, sports and entertainment programming. Maintaining consumers' access to the programming offered by broadcasters – programming that is first-class, free, and responsive to local needs and concerns – would seem an essential element of a robustly competitive video marketplace.

Yet it is undeniable that the advertiser-supported model of free, over-the-air broadcasting is today facing unprecedented challenges. The current recession has, of course, hit both the national broadcast networks and local television stations hard. But even after the current recession ends, the long-term factors that have placed the business model of television broadcasters under increasing strain – namely, vastly increased competition and dramatic technological change – will remain.

Despite the fiercely competitive environment that broadcasters will face during the coming years, CBS is emphatically bullish on the broadcast television business. Even in today's difficult economy television stations remain profitable. When the inevitable recovery takes hold, we believe that television broadcasting will remain an excellent business to be in.

But confidence in broadcasting's long-term prospects cannot be a rationale for ignoring the challenges it confronts. Least of all does it warrant the casual assumption by the Commission that free, over-the-air television – and its contribution to the program choices available to the viewing public – will necessarily be a permanent feature of the video marketplace, impervious to the policy choices made by this agency.

Thus the challenges with which broadcasters must deal include not only technology and competition, but a regulatory structure that materially increases their cost of doing business. Promoting the competitiveness of the video marketplace requires the FCC carefully to weigh the putative benefits of any regulatory initiative it may consider against the possibility that its adoption might compromise the economic health of an essential marketplace player. There are several rulemakings now pending before the Commission, in addition to proposals advocated by interest groups, which fail any reasonable application of such a cost-benefit analysis.

- "Enhanced Disclosure." In its 1984 *Television Deregulation Order,* the Commission eliminated its program logging requirements, finding them inconsistent with policies underlying the Paperwork Reduction Act. In so doing, the Commission cited a GAO report calling those rules the "largest government burden on business in terms of total burden hours." Given this background, the Commission's 2007 resurrection of a seven-year old rulemaking to impose an even more onerous reporting regime on broadcasters is simply baffling. The paperwork demanded by the Commission's *Enhanced Disclosure Order* – which would require the quarterly compilation and reporting of detailed information *on every program and program segment* falling within numerous specific categories enumerated by the Commission – is even more oppressive than the logging rules eliminated as unduly burdensome almost twenty-five years ago. The Commission, after reviewing the record, should grant the petitions for reconsideration and cancel these unnecessary rules.

- Localism. This is another proceeding in which the Commission effectively seeks to reimpose the essentials of a regulatory scheme abandoned as unnecessary as long as a quarter century ago. In this rulemaking, the Commission has proposed, among other things, to (1) reinstate quantitative programming guidelines for processing television license renewal applications; (2) require television licensees to maintain "community advisory boards" to consult with them on "issue responsive" programming; and (3) restore the requirement that broadcast stations maintain their "main studios" within the political boundaries of their communities of license. Largely identical requirements were long ago found by the Commission to serve no useful purpose.

Genuine localism – which will never spring from the Code of Federal Regulations – is essential to broadcasters' competitiveness. Localism is what distinguishes television and radio stations from the virtually limitless media choices contending for the limited time and attention of consumers. Broadcasters know that coverage of their communities – local news, sports, severe weather and emergency alerts, school closings and traffic conditions – is their strongest suit. They also realize that civic involvement – support for local organizations and charities, public service campaigns, and participation in community events – is not only an intrinsic good, but is also good business. Government regulations prescribing the precise means by which all broadcasters should be "local" are thus hardly necessary.

- Embedded Advertising. The Commission is also considering whether to adopt new rules governing "embedded advertising" – that is, product placements and the integration of product mentions into program content – beyond the existing requirement of Section 317 of the Communications Act that the receipt of valuable consideration in return for such identifications be disclosed. In considering this type of proposed rule, the Commission should give great weight to its potential effect on the efforts of broadcasters to remain competitive. Given the increasing penetration of DVRs, and their commercial-skipping capabilities, broadcasters are under pressure to find new ways for their clients reliably to reach their audiences. Product placement and integration offer a potential means of doing so. While some may consider such advertising within program content to be annoying or offensive, the practice is well known to the public from its longtime use in theatrical movies and is essentially harmless. The Commission should carefully consider whether an aesthetic distaste for "crass commercialism" in television programming is sufficient to warrant the adoption of regulations that may, as a practical matter, prevent broadcasters from realizing revenue from a new form of advertising to replace income that may be lost due to technological change.

- Revival of "Fin/Syn". Despite the economic realities facing broadcast television networks, the clear thrust of comments filed by the Independent Film and Television Alliance ("IFTA") is that the financial interest and syndication rules should now be resurrected to protect the public's interest in having "access to a wide range of programming from a variety of sources." In a world where more than 85 percent of television homes subscribe to a multichannel service and the average system offers hundreds of channels, this claim is risible. The FCC's decision to repeal the rules, made more than a decade ago, was clearly correct. It should not be revisited.

****

The above are examples of the kind of regulations the Commission must avoid if it is to avoid undermining the economic health of broadcasters. Conversely, there are regulatory actions that the Commission can take to enhance broadcasters' competitiveness.

- Retransmission Consent. Following a recommendation by the FCC that such legislation was necessary to redress a competitive imbalance between cable systems and local broadcasters, Congress in 1992 for the first time gave television stations the ability to seek compensation from cable operators for the carriage of their signals. Retransmission consent has enabled broadcasters to secure valuable rights from cable operators. Indeed, given increased competition in the multichannel market from satellite and telcos television stations are increasingly being paid for their signals in cash. Not surprisingly, some MVPD interests are not happy with having to pay for broadcast signals that they previously sold to their subscribers without compensating local stations, and have sought to escape marketplace negotiations by urging on the Commission various "adjustments" to its retransmission consent rules that would in fact eviscerate broadcasters' bargaining position. The Commission should stand firm against such efforts, and also oppose similar proposals when they are introduced in Congress.

- Local Television Ownership Rules. Pursuant to Section 202(h) of the Telecommunications Act of 1996, the Commission will again have occasion to consider whether the local television ownership rules remain "necessary in the public interest as the result of competition" in its statutorily-mandated 2010 Quadrennial Review. The Commission should bring a fresh outlook to its review, recognizing that allowing broadcasters to realize potential efficiencies in their operations is now more essential then ever.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of Status of	)	MB Docket No. 07-269
Competition in the Market for	)	
the Delivery of Video Programming	)	

REPLY COMMENTS OF CBS CORPORATION

CBS Corporation ("CBS") hereby respectfully submits its reply comments in connection with the Commission's *Supplemental Notice of Inquiry* in the above proceeding.[1]

INTRODUCTION

As a company that has a predominant stake in over-the-air broadcasting, CBS focuses in these comments on the vital role of broadcast television – network and local – in ensuring a diverse and competitive video marketplace. Since the earliest days of television, the American system of broadcasting has been characterized by a unique partnership between national broadcast networks and their local affiliates – a partnership that has blended local news and information with universally-available national news, sports and entertainment programming key to the cultural unification and civic participation of a diverse nation. It has also produced local television stations that have forged an outstanding record of community service, equaled by few other industries.

---

1 *Supplemental Notice of Inquiry, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, 24 FCC Rcd 4401 (2009).

Maintaining consumers' access to the entertainment and informational programming offered by broadcasters – programming that is first-class, free, and responsive to local needs and concerns – would seem an essential element of a robustly competitive video marketplace.

Yet it is undeniable that the advertiser-supported model of free, over-the-air broadcasting is today facing unprecedented challenges. The current recession has, of course, hit both the national broadcast networks and local television stations hard. But even after the current recession ends, the long-term factors that have placed the business model of television broadcasters under increasing strain – namely, vastly increased competition and dramatic technological change – will remain. The new sources of video entertainment and information that were fragmenting television audiences before the current recession will still be available after recovery. And a return to economic health will not diminish the challenge of maintaining the value of broadcast advertising in the face of the commercial skipping capabilities of the DVR.

Despite the fiercely competitive environment that broadcasters will face during the coming years, CBS is emphatically bullish on the broadcast television business. Headlines about bankruptcies and restructurings seem to appear almost daily, but even in today's difficult economy television stations remain profitable.[2] When the inevitable recovery takes hold,[3] we believe that television broadcasting will remain an excellent

---

2 *See,* Pew Project for Excellence in Journalism, *"State of the News Media 2009,"* http://www.stateofthemedia.org/2009/narrative_localtv_economics.php?cat=2&media=8.

3 A majority of economists recently surveyed by *The Wall Street Journal* believe that the recession that began in December 2007 is now over. Phil Izzo, "Economists Call for Bernanke to Stay, Say Recession Is Over," *The Wall Street Journal*, August 11, 2009, p.A-2. Further, a recently-released study by SNL Kagan predicts that "a mild recovery in ad markets, plus even-year political and

business to be in. And CBS is as confident as ever in the ability of our managers and employees to hold their own against all comers.

But confidence in broadcasting's long-term prospects cannot be a rationale for ignoring the challenges it confronts. Least of all does it warrant the casual assumption by the Commission that free, over-the-air television – and its contribution to the program choices available to the viewing public – will necessarily be a permanent feature of the video marketplace, impervious to the policy choices made by this agency.

Thus the challenges with which broadcasters must deal include not only technology and competition, but a regulatory structure that materially increases their cost of doing business. Without doubt, the prospects for the traditional business model of newspapers today seem far more problematic than the outlook for local television stations. That cannot mean, however, that imposing costly new regulations on broadcasters when they are already under economic stress is reconcilable with the public interest in the industry's vitality. This is especially so since broadcasters must already comply with a raft of government mandates that are largely inapplicable to their multichannel competitors, and which would be universally condemned as unconstitutional if applied to the print media.

Thus, under existing requirements, television stations must maintain public inspection files (to which visits by members of the public are exceedingly rare[4]); compile

---

Olympics spending," will lead to a growth in television station revenue in 2010. *TV Newscheck*, "Kagan: Station Revenue To Grow In 2010," August 18, 2009.

4 *See, Report and Order,* MM Docket No. 00-168, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensees Public Interest Obligations*, 23 FCC Rcd 1274, 1279 (2007) (citing comments filed by Viacom Inc. at 26 (estimating visitors to the public file of an owned station at "less than

quarterly reports on their programs addressing public issues and the needs of children; keep records documenting the "referral sources" from which they have sought candidates for every job opening they fill; post annual summaries of those records on the Internet; attend job fairs or make equivalent "outreach" efforts as part of the employment process; and sell time to political candidates at below-market rates. Broadcasters have long complied with these requirements while managing to thrive economically, and we are not here calling for their repeal. Nonetheless, we do find it remarkable that, in the current economic environment, rules continue to be adopted and proposed that would significantly increase the regulatory handicaps under which broadcasters already labor.

For example, at the very time broadcast profits are squeezed and station values falling, the Commission is in the process of adopting rules that bear a striking resemblance to requirements eliminated by the FCC almost a quarter century ago because they were unduly burdensome.[5] And while broadcasters seek to adapt to technological developments that threaten to undermine their business models, the Commission casts a baleful eye on the essentially harmless practices of product placement and integration,

---

one annually, virtually all of whom are college students on assignment); Walt Disney Company at 17 (making a similar estimate of public file usage at its stations); NBC at 15; and Educational Information Corporation at 2 (only one visitor to public file of its station WCPE in twenty years)).

5 *See, Report and Order,* MM Docket No. 00-168, *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensees Public Interest Obligations*, 23 FCC Rcd 1274 (2008).

despite existing disclosure requirements that seem to have worked well enough for nearly fifty years.[6]

Some commenters in this proceeding have additional suggestions for turning back the regulatory clock to a time when concerns about "network dominance" – rather than broadcaster viability – were ascendent. For instance, although it does not say it in so many words, the filing of the Independent Film and Television Alliance is pervaded by manifest longing for the reinstatement of the financial interest/syndication rules. And the American Cable Association ("ACA") continues to press for the adoption of measures that would hobble broadcasters' ability to negotiate compensation for carriage of their signals – compensation which, by anyone's account, does not begin to approach the sums paid to cable channels that command a fraction of broadcast audiences.

CBS respectfully submits that it is past time for this Commission to subject to "strict scrutiny" any new regulatory initiatives that would impose additional costs on broadcasters. Indeed, the Commission should be alert to ways in which it may enhance the ability of over-the-air broadcasting to survive and prosper. In this regard, contrary to the course urged by the ACA, the Commission should act to ensure the integrity of broadcasters' retransmission consent rights, both in its own rules and by opposing legislative measures that would undermine them. The Commission should also bring a fresh outlook to its review of the local television ownership rules, recognizing that allowing broadcasters to realize potential efficiencies in their operations – as other industries are permitted to do – is now more essential then ever.

---

6 *Notice of Inquiry and Proposed Rulemaking*, MB Docket No. 08-90, *In the Matter of Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd 10682 (2008).

In sum, the Commission should focus as never before on promoting a robust and healthy broadcast television service. Nothing could have a more positive effect on the continued abundance and future competitiveness of the video marketplace.

DISCUSSION

I. Long-Term Trends, Not Just the Recession, Pose Tough Economic Challenges to Over-the-Air Broadcasters.

Last year was a brutal one for the United States economy, not least of all for broadcasters. In a development that once would have been unimaginable, total broadcast television ad revenues were down by four percent on a full year basis in 2008 (6.3 percent in the fourth quarter), despite its being an election and Olympic year.[7] The picture was still worse in the first quarter of 2009, with total revenues down 11.9 percent compared to the same period a year before.[8] The revenue loss was uniform across almost every one of the leading sources of local broadcast television advertising: nine of the top ten categories declined, with automotive leading the way with a 52.1 percent drop.[9]

But however serious the effects of the recession, the difficulties facing television broadcasters go beyond a temporary, albeit severe, downturn from which the broader economy will eventually recover. For the foreseeable future, networks and local stations

---

7 Television Bureau of Advertising (TVB) analysis of estimates supplied by TNS Media Intelligence. *See*, TVB Online, http://www.tvb.org/nav/build_frameset.aspx.

8 *Id.* According to TVB's analysis of TNS Media Intelligence data from the top 100 markets, the component parts of the total broadcast TV number broke down as follows: network television was down 4.8 percent, syndicated television posted a 0.2 percent increase in revenues, and local broadcast television was down 27.6 percent.

9 *Id.*

will be required to adapt with agility and acumen to a rapidly changing marketplace if they are to continue to flourish.

There is no mystery as to why many local television stations now find themselves struggling. The source of broadcasters' difficulties lies in the gradual erosion of the audience of over-the-air stations that has marked the evolution of cable television from a "community antenna" television service, delivering enhanced reception of broadcast signals to remote areas, to the "multichannel video programming providers" of today, which distribute hundreds of satellite-delivered networks, often offering first-run dramas and other original programming, to their subscribers. The dramatic impact of cable television on broadcast audiences has been magnified by the explosive growth of the direct-to-home satellite service, which has gone from being a start-up industry in 1991[10] to having nearly 28 million subscribers in June 2006.[11] Most dramatic of all has been the astonishing rise of the Internet from an obscure computer network, known only to a relative handful of scientists, to a dominant feature of our culture to which increasing numbers of people are turning as a source of video programming.

With this profusion of competitive sources of entertainment and information, a decline in broadcast viewership was inevitable. Between the 1952-53 and 1990-91 television seasons, the prime time ratings collectively garnered by ABC, CBS and NBC

---

10 *See, e.g.,* Graham Button, "Stan Hubbard's giant footprint," *Forbes,* November 11, 1991, p. 344; William LaRue, "Satellite reception dishes for TV lovers," *The Post-Standard* (Syracuse, NY), November 26, 1991, p. C1.

11 *See, Thirteenth Annual Report*, MB Docket No. 06-189, *In the Matter of Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* 24 FCC Rcd 542, 547 (2009) ("*Thirteenth Annual Report*").

declined by half, falling from 75 to 37.5 percent of television households.[12] By the 2000-2001 television season, the prime time ratings of those three networks had eroded by another one-third, to a collective total of 25.[13] And during the 2008-09 television season, the prime time percentage of television households watching the major broadcast networks had slipped still further, to 23.8 – despite now including Fox, the fourth major network.[14]

Viewing of broadcast local news programs – a vital category accounting for roughly 45 percent of the revenues of network-affiliated stations[15] – shows similar erosion. According to an analysis of Nielsen data by the Pew Project for Excellence in Journalism, viewership of local newscasts in 2008 declined or was flat during every sweeps period and in all time slots. *See*, Pew Project for Excellence in Journalism, "State of the News Media 2009" (hereafter "Pew Report") (the Report is available at http://www.stateofthemedia.org/2009/narrative_overview_intro.php?media=1).[16] This decline in audience, the Pew Report observed, continued a long-term trend. In 1998, nearly two-

---

12 *See,* Michael Katz, "*Old Rules and New Rivals: An Examination of Broadcast Television Regulation and Competition* (September 1999) at 11, submitted on behalf of ABC Inc, CBS Broadcasting Inc., and Fox Television Stations, Inc. in MM Docket No 98-35 ("*Katz Study*").

13 Nielsen Television Station Index (Households, October 2000 to May 2000).

14 Nielsen Television Index (includes viewers watching programs as recorded within seven days of live broadcast).

15 Pew Project for Excellence in Journalism, "State of the News Media 2009," http://www.stateofthemedia.org/2009/narrative_localtv_economics.php?cat=2&media=8.

16 *Id.*

thirds of the public (64 percent) reported regularly watching local television news; by 2008, that number had fallen to 52 percent.[17]

Local station revenues have moved in parallel. Thus the Pew Report notes that, when adjusted for inflation, average station earnings have trended downward since 2000.[18] Comparing 1995 and 2007 in constant dollars, the Pew Report finds that average station revenues declined by 21 percent – a one-fifth erosion over a twelve-year period that "raises questions about the long-term health of local television stations."[19]

As we have noted, the economic challenges confronting broadcasters are not merely the result of the current recession, but reflect secular changes in the competitive environment. And the competition facing local stations and networks is only going to grow more intense.

To take one example, in-depth coverage of local sports teams has traditionally been one of the greatest competitive strengths of hometown newspapers and local television stations. But as one analyst recently observed, this longtime stronghold is another area in which competition "is increasing at an accelerating pace."[20] As the analyst notes, "ESPN ha[s] launched a localized version of "Sportscenter" replete with local ads and Web site in Chicago," and "[o]ther outlets are ramping up localized Web sites, including NBC Local Media, the *Huffington Post* and a non profit called *Voices of*

---

17 Pew Report, Local TV, Audience, http://www.stateofthemedia.org/2009/narrative_localtv_audience.php?media=8&cat=1.

18 Pew Report, Local TV. Economics, http://www.stateofthemedia.org/2009/narrative_localtv_economics.php?media=8&cat=2

19 *Id.*

20 "Analyst is Lukewarm on the Future of Local News," TelevisionBroadcast.com, http://www.televisionbroadcast.com/article/83670.

San Diego."[21] Indeed, in less than three months, ESPN Chicago rose to become the city's top sports site, and recently ESPN announced the planned launch of similar sites in New York, Los Angeles and Dallas – a move that its executives said was only the "first inning" of their effort to emphasize local sports coverage across the country."[22]

Broadcast television networks, as well, must be prepared to compete on a broader front with multichannel providers and pay networks. Last November, in a $500 million deal that the *Washington Post* described as representing "the latest in a series of major sports events to migrate from free network television to subscription-based television," ESPN won from Fox the right to telecast the NCAA's Bowl Championship Series from 2011 through 2014. The *Post* article noted that the deal "would leave out about 20 million television viewers who rely on free over-the-air television"; it also reported that ESPN "charges cable and satellite operators $3.65 a month per subscriber to carry its programs."[23]

****

CBS firmly believes that broadcasting – and certainly the best competitors in that business – will continue to thrive. Over the last television season, the CBS Television Network increased its audience both in households and in all key demographics. And although basic cable networks now *collectively* outperform their broadcast competitors, there is no cable network, however successful, that can match CBS's audience head-to-

---

21 *Id.*

22 See, Brooks Burns, "Across U.S., ESPN Aims to Be the Home Team," *The New York Times,* July 20, 2009, p.A-1.

23 Cecilia Kang; "ESPN, BCS Deal Raises Questions," *The Washington Post,* November 26. 2008, p. E05.

head. When the advertising market strengthens with economic recovery, CBS is well positioned to profit.

But the CBS Television Network can continue to reach virtually all American households with free, over-the-air programming only through a strong distribution system, consisting of economically healthy affiliates. If CBS's affiliate body – and local television stations generally – are to remain robust, it is of vital importance that the Commission not saddle them with needless regulations that impose costs unknown to their multichannel competitors. Indeed, the FCC should be alert to ways in which, without unfairly burdening other media, it can enhance broadcasters' ability to compete on a level playing field.

We turn now to a brief discussion of several matters to which we think these considerations are relevant.

II. The Public Interest Requires the Commission to Consider the Potential Impact of Proposed Regulations on the Continued Viability of Over-the-Air Television Broadcasting.

Promoting the competitiveness of the video marketplace requires the FCC to weigh the putative benefits of any regulatory initiative it may consider against the possibility that its adoption might compromise the economic health of an essential marketplace player. There are several rulemakings now pending before the Commission, in addition to proposals advocated by interest groups, which fail any reasonable application of such a cost-benefit analysis.

Conversely, there are regulatory actions that the Commission can take to enhance broadcasters' competitiveness. We discuss two areas for positive action below: retransmission consent and reform of the local television ownership rules.

1. "Enhanced Disclosure".

In its 1984 *Television Deregulation Order,*[24] the Commission eliminated its program logging requirements, finding them inconsistent with policies underlying the Paperwork Reduction Act. In so doing, the Commission cited a GAO report calling those rules the "largest government burden on business in terms of total burden hours."[25]

Moreover, the FCC found that these costly requirements did not advance any valid regulatory objective. Detailed record-keeping as to program types was unnecessary, the Commission concluded, since the obligation of licensees is to broadcast programming responsive to community concerns, not to broadcast programming in particular categories. The Commission therefore replaced the logging rules with the Issues/Programs List, under which licensees compile a quarterly report providing an "exemplary" – rather than an exhaustive – description of their community-responsive programming.

Given this background, the Commission's 2007 resurrection of a seven-year old rulemaking to impose an even more onerous reporting regime on broadcasters[26] is simply

---

24 *Report and Order,* MM Docket No. 83-670, *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1076 (1984) ("*Television Deregulation Order*").

25 *Id. at* ¶ 69.

26 *See, Report and Order,* MM Docket No. 00-168, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensees Public Interest Obligations*, 23 FCC Rcd 1274 (2007) ("*Enhanced Disclosure Order*).

baffling. There is no doubt that the paperwork demanded by the Commission's *Enhanced Disclosure Order* is even more oppressive than the logging rules eliminated as unduly burdensome almost twenty-five years ago. Thus, the rules adopted in that proceeding replace the illustrative Issues/Program Report with a "Standardized Television Disclosure Form" requiring the quarterly compilation and reporting of detailed information *on every program and program segment* falling within specific categories enumerated by the Commission. The record-keeping and administrative burdens imposed by the necessity of completing the form would unquestionably dwarf those entailed by keeping the long-eliminated programming logs.[27]

[27] The "Standardized Disclosure Form" is more burdensome than the Commission's former logging requirements because, among other things, (1) individual program segments - not just programs - must be reported separately; (2) *every* program segment responsive to the Commission's subject categories must be included, rather than just a sample of programming responsive to community issues; (3) station personnel must take the time to make discretionary judgments regarding numerous questions posed by the Form, including whether and how to categorize program segments; and (4) the Form requires entries to be individually entered into an electronic form (submitting an attachment is specifically not permitted), the consequence of which is that station personnel will be required to enter thousands of entries manually every quarter.

Paradoxically, the Form would punish most severely those stations that were particularly committed to news and public affairs programming. Many of the CBS owned television stations, for example, offer more than 30 hours of local news broadcasts per week. Over the course of a quarter, a typical CBS station will broadcast well over 10,000 news programming segments, a large percentage of which will fall within the categories outlined by the Commission. Thus, there can be no doubt that, under the new rules, CBS stations would be forced to make thousands of individual, detailed entries into the Commission's Form, after having expended significant resources to amass the information and exercise the judgments necessary to determine whether and where program segments fall within Commission's program categories.

Broadcasters both petitioned the Commission for reconsideration[28] and sought review from the United States Court of Appeals for the D.C. Circuit.[29] In addition, CBS and other broadcast parties filed comments with the FCC opposing certification of the new rules to the Office of Management and Budget ("OMB"), a step required by the Paperwork Reduction Act.[30] More than a year later, the Commission has neither certified the rules to the OMB nor taken any other action with respect to its "Enhanced Disclosure" proceeding.[31]

The "Standardized Disclosure Form" is a perfect example of a requirement that, without serving any clear regulatory end, would massively burden broadcasters with costs

---

28 *See, Public Notice, Petitions for Reconsideration in Rulemaking Proceeding*, 2008 FCC LEXIS 3967 (FCC Report No. 2866) (released May 8, 2008).

29 *National Association of Broadcasters et al. v. FCC*, No. 08-1135 (filed March 27, 2008, D.C. Cir.). This proceeding is being held in abeyance pending the Commission's disposition of the reconsideration petitions. *Order*, *National Association of Broadcasters et al. v. FCC, supra,* (filed July 11, 2008).

30 Public Law 104-13 § 3507, 109 Stat. 163.

31 The Commission did seek OMB approval of one isolated aspect of its *Enhanced Disclosure Order* – a revision to its station identification rules to require that those announcements include, twice daily, information as to the availability of the station's public inspection file "at [its] main studio *and on its website*." *See,* OMB Control No. 3060-0466, Supporting Statement, page 1 (July 2008) (available at http://www.reginfo.gov/public/do/ PRAViewDocument?-nbr=200807-3060-002 (emphasis added). CBS filed comments opposing OMB approval of the rule on the grounds that (1) the FCC had not yet certified the rest of its *Enhanced Disclosure Order* to the OMB, including the new rule adopted in that *Order* requiring the placement of public inspection files on station web sites; (2) no such substantive requirement therefore existed; and (3) the rules adopted in the *Enhanced Disclosure Order* should be considered by OMB as a whole, rather than on a piecemeal basis. *See,* Comments of CBS Corporation re *Notice of Public Information Collection Requirement*, OMB Control No. 3060-0466 (filed August 4, 2008). OMB agreed and approval of the new rule was withheld. *See, Notice of Office of Management and Budget Action,* ICR Reference Number 200807-3060-002 (August 21, 2008).

that no other media bear. The Commission, after reviewing the record, should grant the petitions for reconsideration and cancel these unnecessary rules.

2. "Localism."

This is another proceeding[32] in which the Commission effectively seeks to reimpose the essentials of a regulatory scheme abandoned as unnecessary as long as a quarter century ago. In this rulemaking, the Commission has proposed, among other things, to (1) reinstate quantitative programming guidelines for processing television license renewal applications; (2) require television licensees to maintain "community advisory boards" to consult with them on "issue responsive" programming; and (3) restore the requirement that broadcast stations maintain their "main studios" within the political boundaries of their communities of license. Largely identical requirements were found by the Commission, in its *Television Deregulation* and *Main Studio* [33] proceedings, to serve no useful purpose.[34]

The public benefits that would derive from the extensive record-keeping and paperwork that the rules would once again require of broadcasters – and from the forced relocation of stations' main studios within political boundaries previously found by the

---

32 *Notice of Proposed Rulemaking,* MB Docket No. 04-233, *In the Matter of Broadcast Localism*, 23 FCC Rcd 1324 (2008).

33 *Report and Order,* MM Docket No. 86-406, *Amendment of Sections 73.1125 and 73.1120 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, Report and Order,* 2 FCC Rcd 3215, 3218 (1987) (*"Main Studio Order"*); *see also Report and Order,* MM Docket No. 97-138, *In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations,* 13 FCC Rcd 15691 (1998).

34 *See Television Deregulation Order, supra,* 98 F.C.C.2d 1076 at ¶¶ 25-30 (quantitative renewal guidelines); ¶¶ 47-54 (ascertainment); *Main Studio Order, supra*, 2 FCC Rcd at 3218.

Commission to be unrelated to the production of locally-oriented programming[35] – are at the very best speculative. But there can be no doubt that the costs of compliance, added to those already incurred in connection with existing regulation, would significantly hamper the efforts of free television and radio broadcasters to remain viable in today's media landscape.

Genuine localism – which will never spring from the Code of Federal Regulations – is essential to broadcasters' competitiveness. Localism is what distinguishes television and radio stations from the virtually limitless media choices contending for the limited time and attention of consumers. Broadcasters know that coverage of their communities – local news, sports, severe weather and emergency alerts, school closings and traffic conditions – is their strongest suit. They also realize that civic involvement – support for local organizations and charities, public service campaigns, and participation in community events – is not only an intrinsic good, but is also good business. Government regulations prescribing the precise means by which all broadcasters should be "local" are thus hardly necessary.

In sum, the Commission's "localism" proceeding is another regulatory initiative that merits "strict scrutiny" to determine whether it is consistent with maintaining the competitiveness of broadcasters. Once again, we urge the Commission to examine the record and terminate this rulemaking.[36]

---

35 *Main Studio Order, supra*, 2 FCC Rcd at 3218.

36 A thorough examination of the record will reveal, among other things, an extraordinary outpouring of letters from hospitals, schools, first-responders, religious institutions and charities – organizations that are the backbone of any community – attesting to the extraordinary commitment of local broadcasters to their communities. *See*, *Reply Comments of CBS Corporation*, MB Docket No.

3. "Embedded Advertising."

In this proceeding,[37] the Commission is considering whether to adopt new rules governing "embedded advertising" – that is, product placements and the integration of product mentions into program content – beyond the existing requirement of Section 317 of the Communications Act that the receipt of valuable consideration in return for such identifications be disclosed. A reading of the *NOI/NPRM* leaves the distinct impression that the Commission believes that such rules – which might require, for example, that required sponsorship disclosures be made simultaneously with the product reference – are desirable.[38]

In considering this type of proposed rule, the Commission should give great weight to its potential effect on the efforts of broadcasters to remain competitive. Given the increasing penetration of DVRs, and their commercial-skipping capabilities, broadcasters are under pressure to find new ways for their clients reliably to reach their audiences. Product placement and integration offer a potential means of doing so. While

---

04-233, at 7-13. Again and again, these voices of genuine community service in essence say: "Local broadcasters are our essential partners; regulations are unnecessary, so please leave them alone." On the basis of these testimonials alone, a hard look is warranted at whether anybody's resources – including the Commission's – are well spent in considering new regulations intended to promote "localism." *Cf.* John Eggerton, "Casting a Wide Public-Service Net; Stations stepped up to give back in 2008," *Broadcasting and Cable*, December 22, 2008, p.12 (recounting some of the public service projects of an industry "awash in good deeds that stretch beyond public service announcements").

37 *Notice of Inquiry and Proposed Rulemaking*, MB Docket No. 08-90, *In the Matter of Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd 10682 (2008) ("*Sponsor ID NOI/NPRM*").

38 Indeed, the very fact that the Commission chose to issue an NPRM, rather than simply a Notice of Inquiry, strongly suggests its disposition to adopt new rules.

some may consider such advertising within program content to be annoying or offensive, the practice is well known to the public from its longtime use in theatrical movies and is essentially harmless. The Commission should carefully consider whether an aesthetic distaste for "crass commercialism" in television programming is sufficient to warrant the adoption of regulations that may, as a practical matter, prevent broadcasters from realizing revenue from a new form of advertising to replace income that may be lost due to technological change.[39]

[39] The Commission's "embedded advertising" proceeding is only one of a number of initiatives that threaten advertising, the primary revenue source of commercial broadcasters. Most troubling is legislation introduced in Congress that would limit the tax deductibility of direct-to-consumer pharmaceutical advertising or otherwise restrict that category, which accounted for more than $1.7 billion in television ad spending during 2008. *See,* Natasha Singer, "Citing Risks, Lawmakers Seek to Curb Drug Commercials," *The New York Times*, July 27, 2009, p. B-1; Rich Thomaselli, "Industry mobilizes to fight off Congress' $37B ad tax," *Advertising Age*, June 22, 2009; TV Basics: Top 25 Broadcast Network TV Categories, TVB Online, http://www.tvb.org/rcentral/mediatrends track/ tvbasics/35_Top_25_ Network_TV_Categories asp. Other proposals include restricting advertising for foods deemed too fattening, regulating the loudness of television commercials, banning interactive advertising in children's shows, and requiring TV ratings for child-directed advertising. *See,* John Eggerton, "Ad Industry Gears Up for Battles with Washington; health care, behavioral marketing and kids' TV among myriad fronts," *Broadcasting and Cable*, August 10, 2009, p. 14 (predicting that "a years-long war over ad-related issues that could threaten billions of dollars in spending is on the horizon.").

4. Revival of Fin/Syn.

Broadcast television networks are today no less challenged than local stations. Eroding audience shares,[40] corresponding decreases in the portion of television ad revenues that they command,[41] and skyrocketing program costs[42] have combined with a weak advertising market to financially stress the major broadcast networks as never before.

Despite these realities, the clear, if implicit, thrust of comments filed by the Independent Film and Television Alliance ("IFTA") is that the financial interest and syndication ("fin/syn") rules should now be resurrected, more than a decade after the Commission repealed them as no longer serving the public interest. Thus IFTA contends that, while "[t]he independent production industry flourished from the 1940s through the early 1990s as a result of several federal judicial and regulatory decisions," the picture changed drastically with the elimination of the fin/syn rules and the related DOJ consent

---

40 See discussion at page 7, *supra*.

41 While the absolute advertising revenues of the major television networks have risen steadily – from approximately $2.3 billion in 1975 to 16.4 billion in 2007 – their share of total television advertising revenues has declined over the same period from approximately 44 to 24 percent. In that time, the cable network share has risen from zero to about 29 percent, overtaking that of the broadcast networks. TVB Online, TV Basics: Television Ad Volume Components, http://www.tvb.org/nav/build_frameset.aspx.

42 *See e.g.*, John Dempsey and Michael Learmonth, "Nets pass the pigskin: ABC punts NFL to ESPN, NBC," *Daily Variety*, April 19, 2005; John M. Higgins, "TV touchdown: can networks make money on record NFL deal?," *Broadcasting and Cable*, April 25, 2005 (NFL TV revenue to zoom 43% over current $2.6 billion deal); Philip Hersh, "NBC pays $2 billion for 2010-12 Olympic Games," *Chicago Tribune*, June 6, 2003 (one-third increase in previous rights fee for 2010 Winter and 2012 Summer Olympic Games).

decrees[43] during the period from 1993 to 1995.[44] As a result, IFTA complains, "independent programming has been largely eradicated from broadcast and pay cable television," and its producers and distributors must "subsist[ ] only on a limited number of basic cable channels."[45] Of course, IFTA also contends that the interest of its members in securing a bigger piece of the production pie coincides fortuitously with the public's interest in having "access to a wide range of programming from a variety of sources."[46]

Several points in response will suffice. First, in a world where more than 85 percent of television homes subscribe to a multichannel service[47] and the average system offers hundreds of channels,[48] it is risible to contend that a "wide range of programming" is not available to the public. At last count, there were 565 national non-broadcast networks,[49] catering to the diverse interests of men (Spike), women (Oxygen, Lifetime), children (Nickelodeon, Disney Channel, Discovery Kids Network), African-Americans (Black Entertainment Television), investors (CNBC, Fox Business Network), animal lovers (Animal Planet), science fiction and horror devotees (Sci-Fi, Chiller), cooks and gourmets (Food Network), soccer fans (Fox Soccer Channel, Gol TV), home improvers

---

43 *See, United States v. National Broadcasting Co. et al.*, 842 F. Supp. 402 (C.D. Cal 1993).

44 IFTA Comments at 4.

45 *Id.* at 3.

46 *Id.* at 1.

47 *See*, *Thirteenth Annual Report*, *supra,* 24 FCC Rcd at 546.

48 *Id.* at 562.

49 *Id.* at 631.

(Home & Garden Television), history and military buffs (The History Channel, The Military Channel), and connoisseurs of the fine arts (Ovation), among many others.

Assuming IFTA is correct in its assessment of the representation of "independent"[50] companies among the producers of the programs seen on certain categories of television channels,[51] the "glaring statistics"[52] to which it points are in fact without policy significance. As the United States Court of Appeals strongly suggested in reversing as unsupported the FCC's former 40 percent cap on in-house productions in network primetime schedules -- and as the Commission implicitly agreed in eliminating the rule – source diversity does not simply equate to program *content* diversity. *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043 (7th Cir. 1992). As Judge Posner explained:

---

[50] IFTA defines "independent" producers and distributors as "those companies and individuals that assume the majority (more than 50%) of the financial risk for production of a film or television program and control its exploitation in the majority of the world." IFTA Comments at note 2. One might initially wonder how a company would be categorized under this definition if it meets the 50 percent test with respect to some productions, but receives more substantial financing from "the major studios" on other projects. More substantively, if the same producer controls the creative aspects of a particular television program, why should the public's "access to a wide range of programming from a variety of sources" be adversely affected if a studio provides 51 percent, as opposed to 49 percent, of the financing?

[51] As noted at page 20, *supra,* IFTA does not claim that "independent" producers have no programs on broadcast television and pay cable; it contends only that their representation on broadcast schedules should be greater, so they will not be required to "subsist[ ] only on a limited number of basic cable channels." While IFTA is silent on the level of "subsistence" that producing content for basic cable channels (as well as their theatrical film output) provides for its members, their prosperity should not be of concern to the Commission absent some demonstrable impact on the *public* interest. *See* discussion at pages 22-23, *infra*.

[52] IFTA Comments at 5.

> [W]e assume that the Commission thinks of source diversity and outlet diversity as means to the end of programming diversity.
>
> Are they? It has long been understood that monopoly in broadcasting could actually promote rather than retard programming diversity. If all the television channels in a particular market were owned by a single firm, its optimal programming strategy would be to put on a sufficiently varied menu of programs in each time slot to appeal to every substantial group of potential television viewers in the market, not just the largest group. . . . The monopolist would broadcast comedy over one frequency and ballet over the other, and thus gain 100 percent of the potential audience. If the frequencies were licensed to two competing firms. . . . [e]ach prime-time slot would be filled with "popular" programming targeted on the median viewer, and minority tastes would go unserved. Some critics of television believe that this is a fair description of prime-time network television. Each network vies to put on the most popular programs and as a result minority tastes are ill served.
>
> Well, so what? Almost everyone in this country either now has or soon will have cable television with 50 or 100 or even 200 different channels to choose among. With that many channels, programming for small audiences with specialized tastes becomes entirely feasible.[53]

The remarkable program *content* diversity available to television viewers today – which dwarfs even that about which Judge Posner wrote in *Schurz* – inexorably leads to the conclusion that the representation of "independents" among the producers of this astonishing profusion of selections is no legitimate concern of the FCC. No less than the antitrust laws, which "were passed for the protection of competition, not competitors,"[54] communications policy must be directed at advancing the public interest, not the

---

53 *Id.* at 1054-55.

54 *Mediacom Communications Corp. v. Sinclair Broadcast Group, Inc.*, 460 F. Supp. 2d 1012, 1020 (S.D. Iowa 2006).

economic fortunes of any particular industry segment. Indeed, the Commission itself recognized, in repealing the 40 percent in-house cap, that "neither the statutory nor the constitutional mandates under which the Commission operates can fairly be construed to authorize intrusion into the program supply business solely for the purpose of enhancing the profits of suppliers."[55]

By contrast, public policy was clearly served by elimination of the fin/syn rules, which precluded the broadcast networks from negotiating for economic rights in television programming on an equal footing with their dual revenue stream competitors. The economic viability of the broadcast networks, like that of local television stations, is properly a matter of great concern to the FCC, given their role in providing top-quality news, entertainment and sports programming to the approximately 15 percent of Americans who cannot afford, or do not wish, to subscribe to a multichannel service. The FCC's decision to repeal the rules, made more than a decade ago, was clearly correct. It should not be revisited.

5. Retransmission Consent.

In a 1990 report to Congress, the Commission warned that the rules then governing cable carriage of broadcast signals created a competitive imbalance that

---

55 *Second Report and Order,* MM Docket No 90-162, *In the Matter of Evaluation of the Syndication and Financial Interest* Rules, 8 FCC Rcd 3282, 3302 (1993) (subsequent history omitted) (quoting the *Final Report* of the Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation,* Vol. II at 726 (1980).

threatened to "undermine the viability of local television."[56] They did so, the Commission found, by allowing cable operators to use broadcast programming at a fraction of the cost paid by broadcasters themselves – in effect, forcing broadcasters to subsidize their direct competitors. Accordingly, the Commission urged Congress "to redress the competitive imbalance between cable systems and local broadcasters by giving broadcasters the right to control the use of their signals" through a system of retransmission consent.[57]

Two years later, Congress adopted the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"),[58] for the first time giving television stations the ability to seek compensation from cable operators for the carriage of their signals.

The Commission's recommendation to Congress to adopt this seminal legislation shows how the FCC can positively employ its expertise to promote broadcasters' ability to compete on a level playing field. Retransmission consent has enabled broadcasters to secure valuable rights from cable operators and -- given increased competition in the multichannel market from satellite[59] and telcos – television stations are increasingly

---

56 *In the Matter of the Commission's Policies Relating to the Provision of Cable Television Service*, MM Docket No. 89-600, 5 FCC Rcd 4962 5042 (1990) (hereafter "*Cable Television Service*").

57 *Id.*

58 Public Law 102-385, 106 Stat. 1460 (1992).

59 Retransmission consent was made applicable to local-to-local satellite carriage of broadcast signals in the Satellite Home Viewer Improvement Act of 1999, PL 106-113, §1000(9), 113 Stat. 1501 (enacting S. 1948, including the Satellite Home Viewer Improvement Act of 1999, Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999.

being paid for their signals in cash. According to a recent SNL Kagan study, "retransmission consent revenues reached $500.1 million in 2008 and are projected to grow to $738.7 million in 2009, crossing the billion-dollar threshold by 2011."[60] Retransmission consent may therefore be expected to play a key role in ensuring the continued vitality of local television stations. Moreover, it will do so in a way that is not open to serious challenge as to its fairness – that is, by preventing rival distribution platforms from competing against television stations by exploiting their signals without compensation.

Not surprisingly, some MVPD interests are not happy with having to pay for broadcast signals that they previously sold to their subscribers without compensating local stations. They have thus sought to blunt the effects of the 1992 Cable Act and increased competition among multichannel distributors by urging on the Commission various "adjustments" to its retransmission consent rules. In fact, as we have shown in a pending Commission proceeding, these supposed tweaks would in fact eviscerate broadcasters' ability to negotiate compensation for the carriage of their signals.[61] The Commission has not been swayed by the MVPD proposals thus far; indeed, in a report

---

60 *TV Newscheck*, "Kagan: Station Revenue To Grow In 2010," August 18, 2009. As an SNL Kagan analyst put it: "Non-traditional revenues have helped to offset some of the revenue softness resulting from the economic downturn. In particular, retransmission fee revenue has proven to be a high growth, high margin revenue stream for TV station owners. We've seen broadcasters successfully conclude retrans agreements with multichannel providers over the past several years, which should lead to continued growth for this revenue segment."

61 *See, Reply Comments of CBS Corporation,* MB Docket Nos. 07-29, 07-198 (filed February 12, 2008).

submitted to Congress pursuant to statutory mandate, the Commission concluded that no changes to the rules were warranted.[62]

The Commission should continue to stand firm against attempts to dilute broadcasters' retransmission consent rights by watering down applicable FCC rules. The right to bargain with MVPDs for compensation for carriage of their signals – just as cable programming networks do – is critical to broadcasters' ability to compete with multichannel providers, which have long enjoyed dual revenue streams.[63]

The Commission's action in urging passage of the retransmission statute on Congress in 1990 – and warning of the consequences for broadcasters' competitiveness if it didn't – should also serve as a model for the FCC today. Cable and satellite operators will obviously press their interests in the legislative arena as well as before the Commission. When they do so, the FCC should not hesitate to apprise Congress of its

---

62 *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 2005 FCC Lexis 4976 at ¶ 2 (released September 8, 2005).

63 In comments filed in this proceeding, ACA complains of rising retransmission consent payments and argues that these costs will hamper small cable operators in their efforts to deploy broadband in underserved areas. Apart from the fact that ACA cites no evidence of this, it is not broadcasters' role to subsidize broadband deployment by cable operators, any more than it is ESPN's, USA Networks' or MTV's role to do so. We note in this regard that a more appropriate source of subsidy for ACA's members would be the $7.2 billion in grants allocated for broadband by the American Recovery and Reinvestment Act of 2009, 111 P.L. 5; 123 Stat. 115, the express purpose of which was "to accelerate broadband deployment in unserved and underserved areas." Stephanie Condon, "Stimulus bill includes $7.2 billion for broadband," CNET News, http://news.cnet.com/8301-13578_3-10165726-38.html?tag=mncol;txt. Indeed, in praising the legislation, the ACA has observed that its "[f]unding [of] broadband programs will enable small and medium-sized cable operators . . . to receive funds to invest in the infrastructure improvements necessary to offer more advanced broadband services." *Id.*

views when it perceives that particular legislative proposals threaten to have an adverse impact on broadcasters' competitiveness.[64]

6. Local Television Ownership Rules.

In its 2006 Quadrennial Review of the broadcast ownership rules,[65] the Commission left the local television ownership rule unchanged, after having significantly relaxed that rule only a few years earlier in a decision ultimately remanded to the FCC on technical grounds by the U.S. Court of Appeals.[66] Pursuant to Section 202(h) of the Telecommunications Act of 1996,[67] the Commission will again have occasion to consider

---

[64] A proposal that would adversely affect broadcasters' ability to negotiate retransmission compensation with MVPDs has recently been introduced in the House of Representatives. *See, e.g.,* John Eggerton, "Satellite Act Draft Makes Rounds on Hill; Dish Network Welcomes Changes, But Bill Is a Mixed Bag for Broadcast Stations," *Multichannel News,* July 20, 2009, p.28. That proposal is ostensibly designed to allow multichannel subscribers the ability to receive an affiliate of a particular network licensed to their own state in order to ensure they have access to relevant news and sports. However, because this provision would in some cases allow an MVPD to import an out-of-market duplicating network affiliate, it would significantly undermine the bargaining power of the home-market affiliate in retransmission negotiations. It would also undermine the preservation of network affiliates' market exclusivity, which was at the heart of the Satellite Home Viewer Act's "unserved household" limitation in the first place. *See, e.g.,* 106 S. Rpt. 42 ("[A]llowing the importation of distant or out-of-market network stations [is] in derogation of the local stations exclusive right[s] . . . . Therefore, the specific goal of the [statutory] license . . . to allow for a life-line network television service to those homes beyond the reach of their local television stations, must be met by only allowing distant network service to those homes which cannot receive the local network television stations.")

[65] *In the Matter of 2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules*, 23 FCC Rcd 2010 (2008).

[66] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 418-20 (3rd Cir. 2004), *cert. denied,* 545 U.S. 1123 (2005). The court found that the FCC had not sufficiently justified the specific numerical limits on ownership that it had adopted.

[67] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-112, and Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (codified at 47 U.S.C. § 303 note (2006))

whether the rule remains "necessary in the public interest as the result of competition" in its statutorily-mandated 2010 Quadrennial Review. CBS will therefore confine its observations in the present context to the following.

Since the FCC's last review of the local television ownership rule, the economic conditions facing broadcast television have made the public benefits of allowing greater consolidation within local markets ever more apparent. At the same time, the almost bewildering profusion of media available to the consumer via the Internet lends an air of unreality and paternalism to concerns about the public's having access to a sufficient diversity of views. The Commission should also bear firmly in mind that television stations too financially stressed to produce in-depth news and public affairs programming will contribute little to the discussion of community concerns.

Next year's review of the television local ownership rules provides an opportunity for the Commission to enhance the competitiveness of local television stations by extending to more of them the ability to realize the efficiencies of duopoly ownership. We hope the Commission will give serious consideration to doing so.

CONCLUSION

A recent report describes how Canadian authorities, faced with the possible loss of television broadcast service to some smaller cities, are exploring measures to help commercial broadcasters as they "continue to struggle with slumping revenue, tumbling profit and increased viewer fragmentation."[68] The measures reportedly being considered

---

68 "Canadian TV Stations Closing as Ad Revenue Plunges," *Communications Daily*, April 1, 2009.

"include tax changes, relaxed Canadian and local content rules and looser restrictions on pharmaceutical ads on the airwaves." Also being proposed, according to the report, is the adoption of fees for the carriage of TV stations by cable and satellite operators. The report notes that the previous rejection of this idea by Canadian regulators is now being criticized by some members of Parliament.

The state of television broadcasting in the United States is not as parlous as in Canada, and many of the measures just now being considered by that country are already in place here. However, the Canadian experience – like that of newspapers in the United States – is a reminder that the configuration of the current media landscape is not necessarily unalterable. Broadcasters have made an invaluable contribution to the current video marketplace, as well as being pillars of public service in their communities. Their continued health should be a touchstone of Commission policy in the coming years.

Respectfully submitted,

CBS CORPORATION

By: Howard F. Jaeckel

Howard F. Jaeckel
Its Attorney

51 W. 52 Street
New York, NY 10019

August 28, 2009